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NOTES.

CHECKS—FORGERY—LIABILITY OF DRAWEE BANK.—In Weisberger Co. v. Barberton Savings Bank Co.,¹ the plaintiff was indebted to Max Roth, whose address was 48 Walker St., New York City. The plaintiff drew a check on the defendant bank to the order of Max Roth and inadvertently addressed the envelope to 48 Walker St., Cleveland, Ohio. A Max Roth, who lived on Henry Street in Cleveland, obtained possession of the check, had it cashed by a saloonkeeper and it passed through two collecting banks before being finally paid by the defendant bank. The amount of the check was debited to the plaintiff's account and this action was brought for the recovery of the money. A judgment for the defendant was affirmed, the court saying: "We decide this case on its own peculiar facts and make no search for, or examination of, reported cases."

Under the law merchant, the forgery of the name of the payee precludes recovery by any indorsee,² and the money paid to an indorsee when the drawee bank is ignorant of the forgery of the payee's name can be recovered.³ Payment to an indorsee when the

¹ 95 N. E. 631 (Ohio, 1911).

² Mead v. Young, 4 T. R. 28 (1790); 1 Ames' Cases on Bills and Notes 433.

³ U. S. v. National Exchange Bank, 214 U. S. 302 (1909).

name of the payee has been forged is a breach of the contract between the depositor and the drawee bank, entitling the depositor to maintain an action against the bank.⁴

The signing of his name by a man who knows that another person of the same name was intended will sustain an indictment for forgery.⁵

Where commercial paper is involved, the test as to whether or not the signing is a forgery seems to be whether or not the man indorsing the paper is the one who was intended to indorse it, even though he may have been expected to act under an assumed name.⁶

Obviously in the principal case, the Max Roth in Cleveland was not the one intended. His act was a forgery and under the principles above stated, clearly the plaintiff was entitled to recover. The precise question has seldom been raised, but in cases where such a forgery as that in this case has been done, a *bona fide* indorsee has been denied recovery against the drawee bank,⁷ and where the money has already been paid to a *bona fide* indorsee, the drawee bank has been allowed to recover it.⁸ The real payee, securing possession of the check after it has been paid and cancelled is still in a position to sue on it.⁹

It is well argued that a bank is guilty of no negligence in paying to a person of the name designated on the instrument; that it cannot be expected that financial institutions shall inquire into the relations of their depositors so intimately as to ascertain whether or not the particular payee named is the one with whom their depositor would be likely to carry on business.¹⁰ This view is not altogether unsupported by authority,¹¹ and in other branches of the law such a rule has been recognized,¹² but to adopt it is merely to abrogate another of the settled principles of the law merchant.

In England, by statute, recovery would be denied the plaintiff;¹³ but section 9 of the Bills of Exchange Act has not been re-enacted in the N. I. L. and the common law in this particular is therefore unchanged. Taken at its best, there is some question as to whether or not the decision in the principal case is in complete harmony with Section 23 of the Negotiable Instruments Law. *C. A. S.*

⁴ *McNeely Company v. Bank of North America*, 221 Pa. 588 (1908).

⁵ *People v. Peacock*, 6 Cow. (N. Y.) 71 (1826); *Barfield v. State*, 29 Ga. 127 (1859); *U. S. v. Long*, 30 Fed. 678 (1887).

⁶ *Robertson v. Coleman*, 141 Mass. 231 (1886); *Emporia Bank v. Shotwell*, 35 Kan. 360 (1886).

⁷ *Beattie v. National Bank of Illinois*, 174 Ill. 571 (1898).

⁸ *Cochran v. Atchison*, 27 Kan. 728 (1882).

⁹ *Indiana National Bank v. Holtsclaw*, 98 Ind. 85 (1884).

¹⁰ 2 *Morse on Banks and Banking*, Sec. 474.

¹¹ *Dissent of L. Kenyon in Mead v. Young*, 4 T. R. 28 (1790).

¹² *Wilson v. Express Co.*, 27 Mo. App. 360 (1887); *Samuel v. Cheney*, 135 Mass. 278 (1883).

¹³ 16-17 Vict., c. 59, sec. XIX; B. E. A., 45-46 Vict., c. 61, sec. LX.